

**DECLARATION OF JAMES R. DICKENS
EXHIBIT A
(PAGES 61-80)**

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1 learning tool."

2 Q. What did you understand Mr. San Miguel
3 was suggesting with that comment?

4 A. We are trained, sir, that when we get a
5 feedback, we couldn't -- we should not be defensive
6 or we should not be upset. Our responsibility, if
7 it's a negative feedback, is to go over to wherever
8 it is and fix it and do it the right way.

9 Q. All right. So these comments were
10 almost four years before March 2002, right?

11 A. Yes, sir.

12 Q. And on the next page, under Section 16,
13 what was your overall performance evaluation?

14 A. "Meets Expectations."

15 Q. Now, on the last page, then, the
16 signature on the left is -- that's
17 Mr. San Miguel's. It says "June 5, 1998"?

18 A. Yes, sir.

19 Q. And then is that Mr. Laney's below his?

20 A. Yes.

21 Q. And --

22 A. And this was Mike Vincent, our director
23 at that time, the one on the --

24 Q. Michael Vincent?

25 A. Yes.

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1 Q. Okay. Now, at the bottom of those is
2 your handwritten comments?

3 A. Yes, sir.

4 Q. And what is that last sentence you
5 wrote, right above your signature?

6 A. "Will try very hard this year to meet
7 more than expectations next year."

8 Q. During the time that you worked at Fred
9 Meyer, did you ever get a rating above "Meets
10 Expectations"?

11 A. Can you say that again?

12 Q. Sure. I'll rephrase it so it's clear.

13 After June 2, 1998, you were
14 evaluated again every year, were you not?

15 A. Yes.

16 Q. Did you ever have an evaluation, after
17 June 2, 1998, that was above "Meets Expectations"?

18 A. I do have some, but there is also a
19 common law in our --

20 Q. Listen to my question. I just want a
21 yes or no.

22 A. Yes.

23 Q. After June 2, 1998, did you ever have a
24 performance appraisal form where the overall
25 performance was rated higher than "Meets

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1 Expectations"?

2 A. I -- I don't really remember, sir, but
3 I think I have some.

4 Q. All right.

5 (Exhibit 6 duly marked)

6 BY MR. DICKENS:

7 Q. Ms. Johnson you have been handed what
8 has been marked as Exhibit 6 to your deposition.
9 Can you identify that, please?

10 A. This is a Performance Appraisal Form.

11 Q. On you?

12 A. Yes.

13 Q. Done by whom?

14 A. By Mr. Laney.

15 Q. Mr. Laney and you were friends, right?

16 A. Yes, sir.

17 Q. And that's his handwriting on this
18 form?

19 A. Yes, sir.

20 Q. Can you read that bottom paragraph that
21 he wrote on this first page?

22 A. "Myrna is learning better to sort the
23 day's work load to accomplish what is most
24 important today. She needs to allow herself to be
25 more open to continued training and not lose

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1 information already learned."

2 Q. Did Mr. Laney explain to you what he
3 meant by that comment?

4 A. Yes, sir.

5 Q. What was it?

6 A. He said that I have info from the prior
7 appraisal that I am learning to figure out which is
8 the most important for the day, and I am
9 continually learning and training.

10 Q. Can you tell me why Mr. Laney did this
11 evaluation, and Mr. San Miguel did the one the year
12 before?

13 A. He does that as a preparation because
14 if somebody get promoted, they should learn that
15 this is part of our training as managers.

16 Q. So, actually, Mr. Laney was the one who
17 should been doing it, and he had Mr. San Miguel do
18 it the year before the training?

19 A. To give Mr. Laney the chance -- excuse
20 me. To give Mr. San Miguel the chance to do this.

21 Q. So then, really, the evaluation was
22 subject to Mr. Laney's review and concurrence of
23 Mr. San Miguel's evaluation of your performance?

24 A. The what, sir?

25 Q. Sure. Mr. San Miguel did your

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1 evaluation in 1998 at the direction of Mr. Laney to
2 assist Mr. San Miguel in training for evaluations,
3 right?

4 A. Yes.

5 Q. But wouldn't you agree that
6 Mr. San Miguel's evaluation was subject to review
7 and concurrence by Mr. Laney?

8 A. Yes.

9 Q. All right. Let's go back to Exhibit 6,
10 page 2. Under Item 3, "Commitment to Excellence,"
11 he's written, "Must improve promptness" and "Needs
12 Improvement." Do you know what that is all about?

13 A. Where is that, sir?

14 Q. It is Item No. 3, "Commitment to
15 Excellence," and Mr. Laney has written, "Must
16 improve promptness" and "Needs Improvement."

17 A. Yes.

18 Q. Well, did he explain to you what he
19 meant by that?

20 A. He meant that I have to make sure that
21 I am always there on time.

22 Q. All right. Were you having trouble to
23 getting to work at time?

24 A. There were a few times kind of like I
25 run a few minutes late. I know this might sound

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1 funny. At that time I was driving a Thunderbird,
2 and I always get stuck on the highway, because when
3 it is snowing, I always get late. My car would not
4 run. So there were a few times that I didn't make
5 it there on time.

6 Q. Thunderbirds are only built for
7 Southern California.

8 A. Exactly. Yes, sir.

9 Q. Under Section 6, under "Controlling,"
10 he's written, "Must seek out more information to be
11 more independent in areas of operational
12 understanding," and he's checked both "Needs
13 Improvement" and "Meets Expectations." Do you know
14 what he meant by that?

15 A. Yes, sir.

16 Q. What?

17 A. That I have to try to learn more so
18 that I do not -- I have to be independent and I do
19 not have to ask questions. I can make my own
20 decisions.

21 Q. And why did Mr. Laney write, under the
22 "Communication" section, that you need to be
23 more -- need to be open-minded?

24 A. What he meant by that is, that I need
25 to keep my eyes open about everything that is going

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1 on.

2 Q. On the next page under "Leadership,"
3 he's checked both "Needs Improvement" and "Meets
4 Expectations." He's written, "Must develop a
5 better acceptance of different personalities."
6 What did he mean by that?

7 A. What he meant by that is sometimes,
8 because I have a very different work ethic, sir,
9 I -- when I walk in there, in that store -- just
10 give me a moment. (Crying).

11 Q. Certainly.

12 A. I work very hard, sir, when I walk into
13 that store, and I do not understand why other
14 people higher than me, and make a lot, lot more,
15 and have more responsibilities, do not work as hard
16 as I am.

17 Q. So you think this refers to people at a
18 higher level, or does it refer to --

19 A. It refers to everybody, sir, either
20 lower level or higher up. But what I said was, I
21 grew up that when we hired -- when we got hired,
22 our loyalty to our company is 100 percent. We work
23 there. They give us paycheck to bring home to feed
24 our family. We are not there to goof. We are
25 there to take care of our employer. And I get

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1 offended when I see some young kids or some older
2 kids who do not do the thing I think has to be
3 done.

4 Q. I understand that. So what Mr. Laney,
5 as you understood it, is telling you is that you
6 need to understand this is sort of the way the
7 world is now, and some people don't have the same
8 work ethic you do?

9 A. Yes, sir, that I cannot impose all of
10 those to everybody.

11 Q. Did it also suggest to you that you
12 were maybe somewhat rigid in your approach to
13 issues and criticism, and maybe you needed to be a
14 little more broad in your understanding of people
15 and how they approach matters?

16 A. No, sir.

17 Q. All right. Now, if Mr. Laney said
18 something to the effect that, "I was trying to get
19 across to Myrna that she was too narrow-minded
20 about what had to be done, and she refused to
21 accept criticism. I was trying to suggest to her
22 to be a little broader in understanding," would you
23 concur in that evaluation?

24 A. Actually, I have never been defensive,
25 sir. No.

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1 Q. well, we have spent most of the morning
2 with you being defensive about your recovery in
3 March of 2002, haven't we?

4 MR. CHOATE: Objection.
5 Mischaracterizes her testimony.

6 MR. DICKENS: I'll rephrase the
7 question.

8 BY MR. DICKENS:

9 Q. Weren't you defensive about
10 Mr. San Miguel's comments about your performance
11 when you came back in March 2002?

12 A. I told him, sir, I will do more
13 recovery. I will do the plan-o-gram.

14 Q. Let's look at No. 10 here. Under
15 "Creativity and Imagination," he's written, "Needs
16 to learn stronger merchandising skills." what did
17 you understand him to mean by that comment?

18 A. Mr. Laney, sir, is a very good
19 merchandiser. Displaying, putting up everything.
20 And he wants me to learn how to put the right
21 merchandise in the right areas.

22 Q. Under Item Section 14, "Employee
23 Management Development," he's written, "Positive
24 attitude towards all employees needed. Learn to
25 work better with challenging personalities." And

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1 he's checked "Needs Improvement" and "Meets
2 Expectations." What did you understand him to mean
3 by that comment?

4 A. He wants me to always be positive when
5 I deal with employees. And that I learn to -- I
6 should learn to deal differently with every
7 employee, especially if they are a challenging one.

8 Q. Well, thinking back on it, as of May
9 1999, who were the challenging personalities with
10 whom you were working?

11 A. Excuse me, sir?

12 Q. Sure.

13 MR. DICKENS: Read it back,
14 please.

15 THE REPORTER: "Question: Well,
16 thinking back on it, as of May 1999, who were the
17 challenging personalities with whom you were
18 working?"

19 A. There is a lot, sir. Yes.

20 Q. And who were they?

21 A. There are some young high school
22 students. There are -- Mr. San Miguel, sometimes.
23 Other employees.

24 Q. All right. Let's pick on
25 Mr. San Miguel. That's the only one you identified

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1 by name. what was challenging about his
2 personality in 1998, 1999?

3 A. We are learning to work with each
4 other, and sometimes we have differences of
5 opinion.

6 Q. That's it?

7 A. Yes, sir.

8 Q. All right.

9 A. And work habits.

10 Q. Okay. what was the overall performance
11 evaluation that Mr. Laney gave you?

12 A. "Meets Expectations."

13 (Exhibit 7 duly marked)

14 BY MR. DICKENS:

15 Q. Ms. Johnson, is Exhibit 7 a copy of the
16 Fred Meyer Performance Appraisal done on you as of
17 May 10, 2000, done by Mr. Laney?

18 A. Yes, sir.

19 Q. Is that Mr. Laney's handwriting on it?

20 A. Yes.

21 Q. Okay. Let's go to page 2, Section 2,
22 on "Commitment to Employees." Mr. Laney has
23 handwritten, "Avoid negative reactions or
24 comments." what was that about?

25 A. where was that, sir?

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1 Q. Page 2, Item 2, "Commitment to
2 Employees." He's written --

3 A. Yes.

4 Q. He's written, "Avoid negative reactions
5 or comments." Did he explain to you the reason for
6 that comment?

7 A. Because when I see things that don't
8 get done, I say something. "This should have been
9 done a long time ago." I say those things.

10 Q. That sort of sounds like what you are
11 telling us that Mr. San Miguel said to you the week
12 of March 12, 2002. Right?

13 A. Yes.

14 Q. And now under "Communication," under
15 Item 7, he checked, "Needs improvement" and "Meets
16 Expectations." He's written, "Improve your
17 relations with coworkers by being a better
18 communicator." Is that about the same thing, that
19 is, your interaction with your coworkers?

20 A. I don't really -- let me read it.

21 Q. Sure. Go ahead. Take your time.

22 A. No. This one is about delegating,
23 about telling the employees what has to be done.

24 Q. So were you having difficulty
25 delegating and explaining what you wanted the

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1 subordinates to do?

2 A. No, sir.

3 Q. Well, then, what was occurring?

4 Explain it to me.

5 A. He was trying to tell me that I should
6 make sure that each of them understand what was the
7 goal.

8 Q. Do you know if, during this time frame
9 covered by this performance appraisal, which would
10 have been approximately from June 1999 to May 10,
11 2000, some of the people that you were supervising
12 were complaining about you and your actions?

13 A. No, sir.

14 Q. You don't know, or they were not
15 complaining? I'm not clear from your answer.

16 A. They do not complain.

17 Q. Would you be surprised if several of
18 them said they did complain?

19 A. If they complain, I was not told.

20 Q. Did they have the right to go to
21 Mr. Laney and complain about you?

22 A. Everybody have the right, yes.

23 Q. Did they have the right to go to
24 Mr. San Miguel and complain about you?

25 A. Yes.

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1 Q. All right. And can you tell us,
2 please, Ms. Johnson, what was your overall
3 performance evaluation for the period ended in
4 May 2000?

5 A. "Meets Expectations."

6 Q. Is that your handwriting at the bottom
7 there under "Employee being appraised completes the
8 items below this line"?

9 A. Yes, sir.

10 Q. Could you read that first sentence?

11 A. "I want to stay focused in this job,
12 get promoted some day, and gain more respect from
13 my co-employees, and achieve more goals and
14 responsibilities. Thank you for all your
15 patience."

16 Q. Was Mr. Laney -- were you testing his
17 patience with your performance?

18 A. No, sir. It is my trait that I pay
19 gratitude to everything that has been given to me.
20 See, he was patient in training me. I just want to
21 show my appreciation.

22 Q. So did you recognize that you needed to
23 improve the respect from your co-employees?

24 A. Yes. Yes, sir.

25 Q. So, to your knowledge, did some of your

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1 coworkers express a lack of respect for your
2 performance?

3 A. No, sir.

4 Q. So what was to improve?

5 A. I was training a new assistant. I was
6 very new in that position. I wanted to gain more
7 respect because teamwork is very important to me.

8 I grew up that there is a
9 difference between fear and respect. If you train
10 the people for fear, they will not do anything when
11 you are not around. If the employees respect you,
12 they will do everything, whether you are around are
13 not. That is why I always respect my employers,
14 sir.

15 Q. All right.

16 (Exhibit 8 duly marked)

17 BY MR. DICKENS:

18 Q. Ms. Johnson, you have been handed what
19 has been marked as Exhibit 8 to your deposition.
20 Take a minute and look at that, please.

21 A. (Reading).

22 MR. CHOATE: Let me raise sort of
23 a standing objection, in general, that she is
24 reading what somebody else has written and giving
25 her impressions of what she thinks they meant. It

1 is not meant -- or she has no clue or no idea,
2 actually, as to what they intended or meant.

3 It's a speculation objection. You
4 are asking her to guess or speculate what somebody
5 else means. I don't mind her giving her
6 impressions of what she thought was going on.

7 MR. DICKENS: Well, I thought I
8 phrased my questions by asking her what he told her
9 -- "he" being the evaluator -- meant by the
10 comments. But anyway -- all right.

11 BY MR. DICKENS:

12 Q. Ms. Johnson, is Exhibit 8 a copy of the
13 performance appraisal done on you by Mr. San Miguel
14 as of June 12, 2001?

15 A. Yes, sir.

16 Q. Now, is that the first time that
17 Mr. San Miguel evaluated you in his position as the
18 apparel department manager?

19 A. I think this is the first time.

20 Q. Now, on page 1, the third full
21 paragraph, he's written, "Myrna has become the new
22 ALE assistant manager. Myrna will have new
23 objectives set forth on this appraisal."

24 Now, did you understand that you
25 had new objectives because you had moved into a

1 higher-level management position?

2 A. Yes, sir.

3 Q. And how did you understand that to be
4 different from your position as a second assistant
5 manager?

6 A. I will be now his delegator. I will be
7 the one in charge of the floor whenever he's not
8 there. I am his second -- his first assistant, so
9 I have to make sure that everything has to be done.

10 Q. As the department manager, were there
11 meetings of the various department managers to
12 which you, as the first assistant, did not attend?

13 A. I only attend when the -- the meeting
14 when the manager is not available.

15 Q. All right. So the answer to my
16 question is, there were manager meetings on a
17 regular basis that you did not attend?

18 A. Yes, sir.

19 Q. And do you know how frequently those
20 occurred?

21 A. Once -- once a week.

22 Q. And did Mr. San Miguel, as the apparel
23 department manager, have responsibilities that kept
24 him in his office on the computer?

25 A. Yes, sir.

1 Q. And what kinds of responsibilities were
2 those, as you understood them, at least?

3 A. To do the schedule, to read memos and
4 everything that was sent to us, to check the profit
5 and loss, the operations.

6 Q. There was a separate operations
7 manager, was there not?

8 A. Yes. What I mean by "operations" were
9 our profit or loss, if we are making money, or to
10 see what is the sale that is coming, so that he can
11 relay them to me.

12 Q. Okay. And by "profit and loss," you
13 mean for the apparel department?

14 A. Yes, sir.

15 Q. Okay. Let's go back to Exhibit 8,
16 please. On page 2, under Item 2, "Commitment to
17 Employees," the first note looks like, "Keep
18 feedback positive." Did Mr. San Miguel explain to
19 you what he meant by that?

20 A. I think what he meant is when I give
21 feedback, it has to be positive feedback to the
22 employees.

23 Q. Now, under Item 5, "Organizing," it
24 looks like Mr. San Miguel has written, "Complete
25 one task at a time." Did he explain to you what he

1 meant by that?

2 A. Yes, sir.

3 Q. What did he mean?

4 A. That is the prioritizing. Like if I
5 have a project, I have to finish it before I start
6 another project.

7 Q. Ms. Johnson, throughout the time that
8 Mr. San Miguel was the department manager, was this
9 kind of a recurring issue between you and him, that
10 is, he was asking you to work on prioritizing your
11 responsibilities?

12 A. Yes.

13 Q. Turn to page 3, please. Under Section
14 7 on "Communication" he's written, "Be more
15 open-minded. Think out of the box. Be on top of
16 OVs, callbacks, et cetera."

17 He's checked "Needs Improvement"
18 for "Communication," with those comments. Did he
19 explain to you what he meant by that?

20 A. He wants me to -- what he mean by
21 "think out of the box" is he wants me to look on a
22 different scenario to solve the problem. And "be
23 on top of the OVs" is to read all of the e-mails.
24 "Callbacks" are those merchandise that I have to
25 take care to return, or to send to other companies

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1 and others.

2 Q. All right. Now, on the prior page, I
3 want to go back. Under "Customer Service,"
4 Mr. San Miguel has rated you as "Very Good." Do
5 you see that, at the very top, Item 1?

6 A. Yes, sir.

7 Q. And then on the second page, under
8 "Teamwork," he's also rated you as "Very Good," and
9 he's written "Great team player. Asset to my
10 team."

11 A. Yes, sir.

12 Q. At that point in time, did you think he
13 was positive about your performance, in general?

14 A. Yes. Yes, sir.

15 Q. And was that during the same period of
16 time when, on occasion, you had him over to your
17 house for different social events? That is, the
18 time frame being calendar year 2001.

19 A. Throughout the period that we worked
20 together, sir, he has been in my house numerous
21 times. So I don't really pay attention.

22 Q. All right. That's fine. Now, on the
23 last page, under "Overall Performance," he has
24 "Meets Expectations." Do you see that?

25 A. Yes, sir.